

ISSUES CONCERNING CERTIFICATE OF COMPLETION AND COMPLIANCE IN HOUSING DEVELOPMENT PROJECTS IN PENINSULAR MALAYSIA

Nuarrual Hilal Md. Dahlan ACIS¹

ABSTRACT

Certificate of Completion and Compliance ('CCC') was introduced by the Government replacing Certificate of Fitness for Occupation ('CF') since 2007. CCC is produced by Principal Submitting Person ('PSP') being normally the professional architect, professional engineer or building draughtsman. The purpose of CCC is to expedite the development process and its approval for housing projects in Peninsular Malaysia and thus can attract investments. However, the enforcement of CCC may also entail certain side effect problems. These include abusive certifications by the professionals to the detriment of the purchasers in housing projects. This paper will highlight this problem. The research methodology that will be used in producing this paper is a composite between legal research and qualitative research methodologies. This paper finds that there are certain flaws in the application of CCC. Following this, the author proposes solutions to overcome these flaws in order to give better protections to purchasers.

Keywords: Certificate of Completion and Compliance (CCC); Housing Development Projects; Peninsular Malaysia; Purchasers' Grievances.

INTRODUCTION

Certificate of Completion and Compliance ('CCC') is a certificate issued by qualified persons who certifies that the building constructed by the developer is duly completed in accordance with the law and fit for human habitation. CCC has replaced the previous practice of Certificate of Fitness for Occupation ('CF').² CF was issued by the local authority pursuant to the provisions under the Street, Drainage and Building Act 1974 (Act 133) ('SDBA') and Uniform Building By-Laws 1984.³

If previously the duty to issue CF was on the shoulder of the local authority, currently the issuance of CCC is on the principal submitting person ('PSP') pursuant to section 70(20)--(27) of SDBA.⁴ PSP is normally the professional architect, engineer, professional engineer or

¹ LL.B, LL.B(Shariah)(IIUM), LL.M(UKM), PhD (IIUM), Advocate & Solicitor (High Court of Malaya), Peguam Sharie (Penang), ACIS(London). The author is also the Director of the Institute for Governance and Innovation Studies, College of Law, Government and International Studies, Universiti Utara Malaysia, 06010 UUM Sintok, Kedah, Malaysia. He can be contacted at nuarrualhilal@gmail.com; hilal@uum.edu.my.

² By the amendment made to Street, Drainage and Building Act 1974 (Act 133)('SDBA') in 2007, the application of Certificate of Fitness for Occupation ('CF') is abolished and is replaced by CCC. Following the amendments made in 2007 also vide an amending act--the Housing Development (Control and Licensing)(Amendment) Act ('Act A1289'), enforced from 12 February, 2007, which amended Act 118, Regulations 2007 (P.U.(A 395) which amended Regulations 1989 and Street, Drainage and Building (Amendment) Act 2007 ('Act A1286') enforced from 12 February, 2007 over the SDBA, the word 'Certificate of Fitness for Occupation' ('CF') has been replaced by the word-'Certificate of Completion and Compliance' ('CCC'). See section 3 of the SDBA, on the definition of CCC. This new definition of CCC was inserted by section 2(b) Act A1286.

³ For instance provisions concerning the replacement of CF to CCC are--section 85A and section 133 of the SDBA (inserted by sections 9 and 12 of Act A1286) and the amending section 13 of Act A1286.

⁴ inserted by section 5(l) of Act A1286.

building draughtsman registered under any written law relating to the registration thereof.⁵ Further according to by-law 2 of the Uniform Building By-Laws 1984 ('UBBL'), 'PSP' means a qualified person who submits building plans to the local authority for approval in accordance with these By-Laws and includes any other qualified person who takes over the duties and responsibilities of or acts for the first-mentioned qualified person in accordance with by-law 7'. While the definition of the 'qualified person' according to the same by-law means 'a Professional Architect, Professional Engineer or building draughtsman registered under any written law relating to the registration thereof'.

According to the new by-law 25(1)(a)—(d) of the UBBL, the CCC is in Form F as set out in the Second Schedule, shall be issued by the PSP—

- a) when all the technical conditions as imposed by the local authority have been duly complied with;
- b) when Forms G1 to G21...have been duly certified...;
- c) when all the essential services...have been provided; and
- d) when he certifies in Form F that he has supervised the erection and completion of the building...has been constructed and completed in accordance with the Act, these By-Laws and the approved plans.

CCC is granted by the PSP certifying that the housing accommodation has been completed and is safe and fit for occupation but does not include partial certificate of completion and compliance.⁶ It is also the duty of the developer to complete the purported housing project including a requirement that the developer must obtain CCC pursuant to the new amended section 7(j) of Act 118.⁷

The reason as to why the duty to issue CCC is on the PSP and no more under the responsibility of the government (local authority) was because the government wished that the development process would be more expedited in respect of issuance of CCC than to have it done by the local authority who was proven taken a considerable time and caused delay in the building and property development progress.⁸ In addition, this new system is an effort towards self-certification and self-regulation approach in the construction industry. Despite the fact that the PSP's sole responsibility to issue CCC and not the local authority, the local authority still have a final say as to the validity of the CCC and that the PSP may be subject to civil and criminal penalty caused by fraudulent or inadequate CCC to the detriment of the stakeholders. This is also prescribed under the SDBA.

⁵ Section 3 of SDBA, inserted by section 2(d) and (e) of Act A1286 and by-law 2 of the Selangor Uniform Building By-Laws 1986 [Sel.P.U.26/1986] inserted by by-law 3(c) of the Selangor Uniform Building By-Laws (Amendment) 2007 [Sel.P.U.9] enforced since 12 April, 2007.

⁶ This can also be seen in section 3 of Act 118, which provides "certificate of completion and compliance" means the certificate of completion and compliance given or granted under the Street, Drainage and Building Act 1974 [Act 133] and any by-laws made under that Act certifying that the housing accommodation has been completed and is safe and fit for occupation but does not include partial certificate of completion and "compliance".

⁷ This section is amended vide section 6(c) of Act A1289 in 2007. See also section 7(g) of Act 118 regarding the duty of the developer to provide CCC, in replacement of CF. Section 7(g) has been amended pursuant to section 6(c) of Act A1289. See also the requirement for obtaining CCC pursuant to the new clause 23(2) of Schedule G, clause 26(2) of Schedule H, 23(2) of Schedule I, and clause 26(2) of Schedule J.

⁸ The Star, 6 June, 2013, "Industry experts weigh in on the Certificate of Completion and Compliance" at <<http://www.thestar.com.my/News/Community/2013/06/06/Discrepancies-in-the-system-Industry-experts-weigh-in-on-the-Certificate-of-Completion-and-Compliance.aspx>>(accessed 21 July 2013).

ISSUES

There are some issues concerning the practice of CCC and CF. For instance, the practice of the local and planning authorities who are responsible in issuing the planning permission,⁹ may too have caused unreasonable difficulties to the developers concerned. The authorities may impose certain unfair conditions, at the very last minute nearing the completion of the project or in the middle of the development, as condition precedent for the issuance of CF or CCC, whereas these conditions may have not been stipulated earlier for immediate action and due notice of the developers. Taman Padang Tembak, Lot No. 688, T.S. 2, Mukim 16, NED, Pulau Pinang¹⁰ is an example, where the local planning authorities imposed certain unwarranted conditions. This happened, because the local planning authorities had amended the approval of certain plans made earlier, right in the course of construction of the housing units and that new conditions had to be complied with by the developer or otherwise CF would not be granted. This would certainly, cause a lot of difficulties, wasting time and moneys of the developers.

This similar catastrophe also appears in case law *Tang Kam Thai and 133 Others v Langkah Cergas Sdn Bhd and Others* [2005] 1 MLJU 24.¹¹ In this case the purported completion of the housing development and the delivery of the vacant possession for the units was delayed. In the result, the purchasers claimed liquidated late delivery damages. One of the reasons causing the delay was the new demands imposed by the planning authorities before CF could be released.¹²

Further, sometimes the problem of abandonment may occur due to the non-compliance by the developers themselves, with the conditions and requirements imposed in the planning permission, resulting in the failure to obtain the necessary CF or CCC before the project can be considered complete and can be handed over to the respective purchasers. This problem can be seen in Taman Temiang Jaya, Seremban, developed by AMA Construction Sdn. Bhd¹³ and Wisma Telaga, Butterworth.¹⁴ Similar is the case in *Syarikat Chang Cheng (M) Sdn. Bhd v. Pembangunan Orkid Desa Sdn. Bhd.* [1996] 1 MLJ 799, where there was an order from the local authority for the developer to stop the development work, due to the non-compliance with the conditions imposed by the authority.

⁹ The relevant provisions on planning permission are sections 18–25 of the Town and Country Planning Act 1976 (Act 172) ('TCPA').

¹⁰ File Number: KPKT/08/824/2605.

¹¹ See also regarding the conditions imposed during the approval of planning permission application stage in *Bencon Development Sdn. Bhd v. Majlis Perbandaran Pulau Pinang & Ors* [1999] MLJU 91, *Rethina Development Sdn. Bhd v. Majlis Perbandaran Seberang Perai, Butterworth* [1990] 2 MLJ 111, *Tropiland Sdn Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ, 16 (High Court) and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd* [1996] 3 MLJ, 94 (Court of Appeal). See also problems faced by the developer leading to the abandonment of the project due to the instruction of the local authority in *Aw Yong Wai Choo & Ors v. Arief Trading Sdn. Bhd & Anor* [1992] 1 MLJ 166.

¹² See also *Tropiland Sdn. Bhd v Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (High Court) and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd* [1996] 3 MLJ 94; [1996] 3 CLJ 837 (Court of Appeal).

¹³ The planning permission was for the development of double storey shop houses. However, the developer did not comply with the conditions attached to the permission, but instead, changed and erected double storey terraced houses without the permission from Majlis Perbandaran Seremban. This is based on File Number: KPKT/08/824/2732-01.

¹⁴ Previously known as Wisma ABC, Lot 3681, Jalan Telaga Air, Seksyen 4, Butterworth, Seberang Perai Utara, Pulau Pinang, developed by Tropiland Sdn. Bhd in File Number: KPKT/08/824/1843. See also *Tropiland Sdn. Bhd. v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (High Court), and, *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd.* [1996] 3 MLJ 94 (CA); [1996] 3 CLJ 837 (CA).

It is opined that, the violations and contraventions of these statutory duties emanate from the misunderstanding or rather a lackadaisical attitude of the developers toward these statutory duties. What is important for the developers, it is opined, is the procurement of the CF or the CCC,¹⁵ and the delivery of vacant possession of the purported completed units to the purchasers on time to avoid any liability to pay the late delivery damages. Similarly, as long as they can obtain the planning permission, the approved plans, the housing developer's licence and the advertisement and sale permits, they are safe and secured. Thus, in the result of their failures to fully comply with the statutory duties prescribed by sections 7, 8 and 9 to Act 118, had caused difficulties for the Housing Controller to effectively govern and to give expeditious directions and exercise appropriate actions, to avoid or lessen the problems of abandonment.

It is observed that, Ministry of Housing and Local Government (MHLG) (now re-branded as the Ministry of Urban Wellbeing, Housing and Local Government ('MUWHLG')) has not been able to fully carry out the supervision and enforcement effectively due to insufficient staff, inadequate professional staff, ineffective administrative machinery and lack of technical and legal knowledge.¹⁶

There is a new optional system of 'quasi build then sell'¹⁷ in which the purchasers are only to pay 10% of the purchase price on the signing of the sale and purchase agreement, while the remaining 90% will be paid once the units have been completed and the CCC has been duly been granted warranting occupation thereat. Nonetheless, there is still no guarantee that the developer will complete the remaining 90% progress of the project. They may abandon the project mid-way during the course of construction and run away with the collected 10% deposit paid by the purchasers. The worst is, if they (the directors and the shareholders) cannot be traced, leaving the purported project abandoned and the helpless purchasers without any remedy. The problem about the forfeiture of the 10% deposit by developers can be illustrated in certain abandoned housing projects¹⁸ where the developers had collected deposit from purchasers and certain preliminary works had been done on the sites of the project but the projects were later totally left abandoned and idle. The purchasers also failed to get their deposit paid earlier back. It follows that, it is still doubtful that, this 'quasi build then sell' system can afford sufficient protection to purchasers in this situation. This is because the purchasers may not be able to get any redress for losses suffered, because the developers and the directors have run away (may be overseas) and cannot be contacted to settle the problems faced.

In another issue, it is submitted that, the conditions imposed by the local planning authority and the local authority, in respect of the planning permission and the approved plans, may in certain situations, be uncertain and may not be in consonant with each other, causing difficulty for the developer to fulfill them and to obtain the full CF or CCC. For example, in *Tropiland Sdn. Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (High Court), and *Majlis Perbandaran*

¹⁵ Obtained from the local authority or the principal submitting person (PSP) and not from the Housing Controller.

¹⁶ Ahmad Subki bin Nusi, Interview by author, Pusat Bandar Damansara, Kuala Lumpur, 8 February, 2007 and also based on the observations of the researcher.

¹⁷ See the new statutory standard sale and purchase of housing accommodation--Schedules I and J.

¹⁸ For example see Taman Hamilton, Lot 163 and 2156, Bandar Jelutong, Section 2, NED, Pulau Pinang developed by City & Country Development Sdn. Bhd where 158 units had been sold to public, in file number: KPKT/08/3013/E, Taman Sejahtera, Teluk Air Tawar, Seberang Perai Utara, Pulau Pinang in Utusan Malaysia dated 1 September, 2004, "Nasib Pembeli Rumah Terbengkalai Gelap Pemaju Menghilangkan Diri", at <<http://www.hba.org.my/news/2004/904/nasib.htm>> (accessed on 20 May, 2007) and in file number: KPKT/08/824/6782 and Taman Universe, Lot 1556, Mukim 13, NED, Pulau Pinang, developed by Cariwang Properties Sdn. Bhd where 62 persons had purchased and paid the deposit for the purported units in file number: KPKT/08/824/2349-2.

Seberang Perai v. Tropiland Sdn. Bhd. [1996] 3 MLJ, 94; [1996] 3 CLJ 837 (Court of Appeal), the application of the applicant developer for the CF was rejected by the local authority as the applicant developer failed, *inter alia*, to construct the perimeter drain along the eastern and southern boundary of the land on which the completed building was erected, pursuant to the earthworks plan (for the purpose of carrying the earthworks on the project site required by section 70A(1)(2)(3) of the SDBA¹⁹) but there was no such requirement (perimeter drain) in the amended layout plan (for the purpose of planning permission, which is governed by the Town and Country Planning Act 1976 (Act 172)('TCPA'). However, according to the Court of Appeal on appeal by Majlis Perbandaran Seberang Perai (MPSP), MPSP had discretionary power to issue CF pursuant to by-law 25(1) of the UBBL²⁰. In the issuance of CF, MPSP had the right to impose conditions pursuant to the TCPA and the SDBA. Thus, in granting CF, requirements imposed by these two legislations (TCPA and SDBA) have to be complied with by the applicant developer. In other words, the requirement for construction of the perimeter drain, although not having been provided in the amended layout plan (for the purpose of planning permission), would still be required for the purpose of the grant of CF, as the earthworks plan (for the purpose of carrying out earthworks) had so provided.

There are situations where the certification and verification made by the qualified persons may be done dishonestly, at the expense of the purchasers and their housing units purchased.²¹ Even though there are guidelines²² and pursuant to the new by-law 25(4) of the UBBL and section 70D of the SDBA, the local authority may conduct inspection over the purported building works, verifying that all conditions imposed have been duly met by the developer warranting the issuance of the CCC, this may have not been done thoroughly, i.e limited and minimal.²³ In other words, there is **no mandatory** requirement on part of the local authority to supervise, cross-check, inspect and verify each and every stage of construction undertaken by the developers and certificate of stages' completion issued by the qualified persons of the developers. Even with the new amendments made to SDBA (for example section 70(20)) too, there is **no mandatory** duty on part of the local authority to do the same. With the new amendment made in 2007, the CCC, no more CF, will be issued by the Principal Submitting Person ('PSP'), not the local authority anymore. There is nothing in the SDBA and the UBBL requiring the local authority to carry out **mandatory** reasonable supervision, cross-check, inspection, certification and verification over each and every stage of construction works undertaken by the developers and the CCC issued by the PSP of the developers, serves as a

¹⁹ Note that pursuant to section 70A(3) of the SDBA, in granting the approved earthworks plans and specifications, the local authority may impose such conditions as it deems fit.

²⁰ Now this by-law 25(1) has been amended. For example, pursuant to the current by-law 25(1) of the Selangor Uniform Building By-Laws 1986 [Sel.P.U.26/1985], CCC has replaced CF, which shall be issued by the PSP according to the requirements imposed by by-law 25(1) of the Selangor Uniform Building By-Laws 1986. This new by-law 25(1) has been inserted by by-law 15 of the Selangor Uniform Building By-Laws (Amendment) 2007 [Sel.P.U.9] enforced since 12 April, 2007. See also by-law 25(1) of the Kedah Uniform Building By-Laws, inserted by by-law 14 of the Uniform Building By-Laws (Amendment) 2007.[K.P.U.6](Kedah), enforced since 12 April, 2007.

²¹ Tomadan Johari, Interview by author, Pusat Bandar Damansara, Kuala Lumpur, 22 December, 2005.

²² Bahagian Perancangan Dasar dan Pembangunan, Kementerian Perumahan dan Kerajaan Tempatan, *Garis Panduan Pengeluaran Sijil Kelayakan Menduduki (CFO)*, 17 Oktober, 2000 (Kuala Lumpur: Author, n.d). These guidelines are no more applicable following the amendment made in SBBA concerning issuance of CCC by the PSP (section 70(20) of the SDBA and by-law 25(1) of the Selangor Uniform Building By-Laws 1986 [Sel.P.U.26/1985] inserted by by-law 15 of the Selangor Uniform Building By-Laws (Amendment) 2007 [Sel.P.U.9]) in 2007. See also by-law 25(1) of the Kedah UBBL. However, based on the new guidelines, the function of the Local authority is minimal over the works and certifications issued by PSP. See the current Kementerian Perumahan dan Kerajaan Tempatan, Kementerian Perumahan dan Kerajaan Tempatan, *Buku Panduan Pelaksanaan Kaedah Pengeluaran Perakuan Siap dan Pematuhan oleh Para Profesional* (Kuala Lumpur: Author, n.d), 16, 17.

²³ See also the new section 70(22) and (23) of the SDBA.

preventive measure against any dishonest act of the PSP. See by-law 25(1)(b) of the UBBL 1984 which provides that all forms G1 to G21 in respect of stage of certifications as set out in the Second Schedule, which shall be duly certified by the PSP but **without any mandatory** requirement imposing obligation on part of the local authority to cross-check, inspect, certify, verify and supervise, reasonably, the purported completed works for the stages of construction.

Similarly for Form F (Certificate of Completion and Compliance) and Form F1 (Partial CCC) in the Second Schedule to the UBBL which shall only be issued by the PSP, **without requiring any mandatory** reasonable verification, certification, supervision, inspection and cross-check by the local authority.

It is opined, this legal gap may lead to certain unwarranted acts of the PSP as their works, verifications, supervisions, inspections and certifications are not fully verified, cross-checked, inspected and supervised by the local authority, unlike in the previous practice, whereby CF shall only be issued by the local authority and not by the qualified persons. In the latter situation (previous practice), it is opined, there was still room for the local authority to withhold the issuance of CF, if the building works done, according to the local authority, are not in accordance with the law (UBBL and SDBA). Because of the absolute authority and power granted to PSP to issue CCC and no mandatory duty of the local authority to supervise, cross-check and inspect the building works serving as a preventive measure, this legal gap may lead to sub-standard construction works or the construction works done may have not been in accordance with the law, to the detriment of the purchasers' interests.

In addition to the above, there is nothing in Act 118 requiring the Housing Controller to likewise carry out mandatory supervision, cross-check, inspection and verification over each and every stage of construction works undertaken by developers, claims made by developers and certificate of stages of completion issued by engineer and architect of the developers. This mandatory duty is important to protect the interests of the purchasers and to ensure that the works are done according to Act 118 and its regulations and the statutory standard sale and purchase agreements (Schedules G, H, I and J).

Further there are circumstances where the technical agencies and the local authority may impose unreasonable conditions, before CF or CCC can be granted, such as illustrated in Taman Padang Tembak, Lot No. 688, TS 2, Mukim 16, NED, Pulau Pinang,²⁴ Taman Cemerlang, Lot No. 3254, Lebuhraya Thean Teik, Bandar Air Itam, NED, Pulau Pinang,²⁵ and in the decided cases viz, *Bencon Development Sdn. Bhd v Majlis Perbandaran Pulau Pinang & Ors* [1999] MLJU 91; [1999] 2 MLJ 385; [1999] 2 AMR 1440, *Tropiland Sdn Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16, and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd* [1996] 3 MLJ 94; [1996] 3 CLJ 837.

Even though there is a legal requirement that these authorities shall act in accordance with rules of natural justice, based on cases decided by the court, it is found that it is not easy to prove the so-called 'injustices' done and to quash the conditions made, or otherwise if it is possible, this may be time-consuming process and may involve numerous hindrance throughout the trial in court, possibly detrimental to the whole development progress. This can be seen *Bencon Development Sdn. Bhd. V. Majlis Perbandaran Pulau Pinang & Ors* [1999] MLJU 91; [1999] 2

²⁴ Variation of the conditions for CF in the middle of the development in file number: KPKT/08/824/2605.

²⁵ TNB required land for erecting the electrical sub-power station, but later TNB aborted the requirement resulting in substantial losses to the developer. This is based on file number: KPKT/08/824/7347-1.

MLJ 385, *Tropiland Sdn Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16, and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd* [1996] 3 MLJ 94; [1996] 3 CLJ 837.

CONCLUSION AND RECOMMENDATIONS

In the opinion of the author, the planning permission and all the conditions stipulated should be made certain and not be subject to variation from the date of the issuance, during the course of construction, development and rehabilitation of the project until the date of the application of CF/CCC by the qualified persons/PSP. This is to avoid any possible problems to the developer, as evident in above illustration, which can lead to the abandonment of housing projects and other housing problems, unless the planning authority and the technical agencies agree to bear all the ensuing costs as consequence to any change or variation made by the developers. Therefore, a new provision should be inserted into the TCPA to give effect of this suggestion.

Similar amendment should be had to the conditions of the approved building plan and other plans. To effect this suggestion, a new supplemental provision should be inserted into the SDBA the plans so approved and the conditions so imposed by the local authority or the technical agencies, shall be irrevocable and final for the purpose of issuance of certificate of completion and compliance, pursuant to this Act or any By-laws made thereunder and if later in the event, there is any variation in the plans or conditions for the purpose of the issuance of the said certificate, required by the local authority or the technical agencies, as the case may be, the local authority or the technical agencies concerned shall make good any losses incurred as the result of such required variation.

Finally regarding the human resource, inefficient administration and logistics problems, it is suggested adequate priority, administrative revamps and monetary provisions should be provided by the State and Federal Governments to ensure efficiency of the local authority and the technical agencies machinery.

In order to protect the funds of purchasers still in the hands of the end-financiers from being released dishonestly by the developer working in concert with the qualified persons/PSP, it is proposed that the claims, the construction stages and the works as prescribed in the statutory standard contract of sale (Schedules G, H, I and J) done shall also be verified, supervised and inspected by the Housing Controller. This is to ensure that each and every stage of construction and the works are duly completed in accordance with the law, and that the approved specifications and plans and the claim is a true claim. The claim made by the developer for release of the money in the Housing Development Account, shall also be accompanied by the certificate from the local authority or the technical agencies, as the case may be, certifying that the erection of the building is in accordance with the requirements of the law (such as the SDBA and UBBL).

In consequence, a new provision has to be added to section 7 of Act 118 and Regulation 8(1) of Regulations 1991, imposing a duty on the Controller to undertake reasonable periodic inspection and supervision over the progressive development/construction stages and the works as prescribed in the statutory standard contract of sale and purchase (Schedules G, H, I and J). The provision shall also provide the right of purchasers to independently supervise and inspect the construction stages and the works done and grant power to request the end-financiers to stop any release of money to the vendor developer, if the works done are not according to the law.

To implement the above suggestions, it is proposed that, MHLG should open up branches in each and every district in Peninsular Malaysia, where housing development projects are carried out. The statutory duties as prescribed by Act 118 and its Regulations, can be effectively carried out by the branches' officers. These duties include, for example, the processing of the applications for housing developer's licence, applications for advertisement and sale permit, implementing full enforcement of the provisions in Act 118 and carrying out supervisions and inspections of each and every stage of construction in the housing development projects erected within that particular district, without having to call on the MHLG head-quarter's officers in Kuala Lumpur to carry out the same, which may not be practical and expedient. Only urgent and classified matters are to be handled by the MHLG headquarters. Most of the statutory duties provided in Act 118 would be executed by the branches' officers. Thus, by having this administrative reform, it can make the above proposed duties to be efficiently and effectively undertaken.

The local authority shall also have to undertake supervision and inspection to cross-check the quality and standard of works during and after the course of construction of the building units and infrastructures. It is suggested, this proposal be incorporated into the SDBA.

Similarly, a new provision in UBBL should also be introduced to the effect that the local authority or any officer authorized by it in writing shall reasonably supervise and inspect each and every stage of building works thereof and calling attention to any failure to the building or non-compliance with these By-Laws which he may observe and, giving notice in writing to the principal submitting person ordering such failure or non-compliance to be rectified.

Following the above amendment, for the purpose of issuing the CCC pursuant to section 70(20) of the SDBA,²⁶ and by-law 25(1) and (2) of the UBBL, the PSP, must also get the certification from the local authority or the technical agencies. Thus, section 70 of the SDBA should be amended and incorporate this proposal.

For the above purpose the schedule of works, stages of construction, flowcharts and plans for the whole development of the intended building and project shall also be submitted to the local authority for approval. It is suggested that this additional requirement be put into practice or a new by-law 3(3) for the UBBL be enacted as to the following proposal that the PSP shall submit to the local authority, the schedule of works, stages of construction, flowchart and plan of the purported building development for approval.

Thus, by having the above provisions, the quality of works and materials used for the construction of the building and project under the housing development shall be in accordance with the requirements of the UBBL, SDBA, the building standard practices/guidelines and Act 118 (especially in accordance with the terms and conditions stipulated in the statutory standard sale and purchase contract). Further, the progress claim and release of the end-finance money are made after duly reasonable supervision, inspection and certification by the local authority and the technical agencies. Thus, this practice and legal requirement could preserve the money from being manipulated dishonestly by unscrupulous developers, engineers, architects and the bankers as evident in many housing development projects in Malaysia.

REFERENCES

Aw Yong Wai Choo & Ors v. Arief Trading Sdn. Bhd & Anor [1992] 1 MLJ 166.
Bahagian Perancangan Dasar dan Pembangunan, Kementerian Perumahan dan Kerajaan

²⁶ Inserted by section 5(l) of Street, Drainage and Building (Amendment) Act 2007 (Act A 1286).

Tempatan. (n.d). *Garis Panduan Pengeluaran Sijil Kelayakan Menduduki (CFO) 17 Oktober, 2000*. Kuala Lumpur: Author.

Bencon Development Sdn. Bhd v Majlis Perbandaran Pulau Pinang & Ors [1999] MLJU 91; [1999] 2 MLJ 385; [1999] 2 AMR 1440.

Bencon Development Sdn. Bhd v. Majlis Perbandaran Pulau Pinang & Ors [1999] MLJU 91.

Housing Development (Control and Licensing) Act 1966 (Act 118) and its regulations.

Housing Development (Control and Licensing)(Amendment) Act (Act A1289).

Interview by author, Ahmad Subki bin Nusi, a Housing Inspector, Division of Supervision and Enforcement, Ministry of Housing and Local Government, Pusat Bandar Damansara, Kuala Lumpur on 8 February, 2007.

Interview by author, Tomadan Johari, the then Deputy Secretary General (Operation and Development), Ministry of Housing and Local Government, Kuala Lumpur, on 22 December, 2005.

Kedah Uniform Building By-Laws.

Kementerian Perumahan dan Kerajaan Tempatan. (n.d). *Buku Panduan Pelaksanaan Kaedah Pengeluaran Perakuan Siap dan Pematuhan oleh Para Profesional*. Kuala Lumpur: Author.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: File Number: KPKT/08/824/2605.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: File Number: KPKT/08/824/2732-01.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: File Number: KPKT/08/824/1843.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: file number: KPKT/08/3013/E.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: file number: KPKT/08/824/6782.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: file number: KPKT/08/824/2349-2.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: file number: KPKT/08/824/2605.

Letter, circulars and undocumented materials of the Ministry of Housing and Local Government in file number: file number: KPKT/08/824/7347-1.

Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd. [1996] 3 MLJ 94 (CA); [1996] 3 CLJ 837 (CA).

Rethina Development Sdn. Bhd v. Majlis Perbandaran Seberang Perai, Butterworth [1990] 2 MLJ 111.

Selangor Uniform Building By-Laws (Amendment) 2007 [Sel.P.U.9].

Selangor Uniform Building By-Laws 1986 [Sel.P.U.26/1986].

Street, Drainage and Building (Amendment) Act 2007 (Act A 1286).

Street, Drainage and Building Act 1974 (Act 133).

Syarikat Chang Cheng (M) Sdn. Bhd v. Pembangunan Orkid Desa Sdn. Bhd. [1996] 1 MLJ 799.

Tang Kam Thai and 133 Others v Langkah Cergas Sdn Bhd and Others [2005] 1 MLJU 24.

The Star, 6 June, 2013, *Industry experts weigh in on the Certificate of Completion and Compliance*. Retrived July 21, 2013, <http://www.thestar.com.my/News/Community/2013/06/06/Discrepancies-in-the-system-Industry-experts-weigh-in-on-the-Certificate-of-Completion-and-Compliance.aspx>.

Town and Country Planning Act 1976 (Act 172).

Tropiland Sdn. Bhd v Majlis Perbandaran Seberang Perai [1996] 4 MLJ 16 (High Court)

Uniform Building By-Laws 1984.

Utusan Malaysia dated 1 September, 2004, "Nasib Pembeli Rumah Terbengkalai Gelap Pemaju Menghilangkan Diri", at <<http://www.hba.org.my/news/2004/904/nasib.htm>> (accessed on 20 May, 2007).